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In The
Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT
OF THE UNITED STATES, ET AL.,

Petitioners,

v.

INTERNATIONAL REFUGEE
ASSISTANCE PROJECT, ET AL.,

Respondents.

DONALD J. TRUMP, PRESIDENT
OF THE UNITED STATES, ET AL.,

Petitioners,

v.

HAWAII, ET AL.,

Respondents.

On Writs Of Certiorari To The United States Courts Of Appeals For The Fourth and Ninth Circuits

BRIEF AMICUS CURIAE BY THE ZIONIST ORGANIZATION OF AMERICA (ZOA) IN SUPPORT OF PETITIONERS DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.

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INTEREST OF AMICUS CURIAE[1]

The Zionist Organization of America ("ZOA") respectfully submits this amicus brief in support of President Donald J. Trump's petition to enforce the March 6, 2017 executive order entitled "*Protecting the Nation from Foreign Terrorist Entry into the United States*," Exec. Order No. 13780, 82 Fed. Reg. 13209 ("EO-2").

The Zionist Organization of America is the oldest pro-Israel organization in the United States, founded in 1897 as the Federation of American Zionists. One of the ZOA's earliest presidents was Supreme Court Associate Justice Louis Brandeis. ZOA is dedicated to protecting the safety, rights and survival of the Jewish people, pro-Israel community and fellow American citizens, by educating the public, and via court and administrative proceedings, involvement in and monitoring Congressional hearings, media publications and other mechanisms.

ZOA is a leader in combatting anti-Semitism today. ZOA assists Jewish, pro-Israel and neutral students on U.S. college campuses who are subjected to attacks and threats from members of radical groups. ZOA is also in contact with Jewish leaders throughout Europe regarding the frightening increase in radical

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[1] Counsel for Petitioner filed a blanket consent to amicus briefs. Counsel for Respondents consented to ZOA's filing of an amicus brief. No entity other than ZOA assisted with or paid expenses for filing this brief.

groups' physical and other attacks against Jews, Christians, women, homosexuals, and others, in the wake of extensive unvetted immigration into Europe from terrorist haven countries. ZOA President Morton A. Klein was a keynote speaker at the 2014 International Center for Combatting Anti-Semitism conference in Belgium.

ZOA's knowledge and experience can provide important insights and background for the Court.

In addition, ZOA officers, staff and members include direct descendants of Holocaust victims and refugees. For instance, ZOA President Morton Klein is the son of Holocaust survivors, and was born in a displaced persons camp in Germany. ZOA Director of Special Projects (counsel herein) Elizabeth Berney is the daughter of a refugee from Nazi Germany (who went back with the United States Army to fight the Nazis). Several of her relatives including her great-grandmother were passengers on the infamous May-June 1939 voyage of the SS St. Louis.

Given the background of many at the ZOA, ZOA is concerned that EO-2's opponents are exploiting and making false analogies to Jews' World War II experiences; ignoring the real dangers that EO-2 seeks to address, and distorting Jewish/Judeo-Christian and American values to try to justify admitting persons into the United States today who cannot be properly vetted and who thus endanger U.S. citizens.

SUMMARY OF ARGUMENT

It is evident that our government lacks the information and procedures to thoroughly vet persons admitted to the United States, particularly persons from the six countries specified in EO-2. These six named countries are marked by combat zones and infested with terrorist groups (*e.g.*, ISIS, Hezbollah, al Qaeda, Hamas, and al-Shabaab) and their sympathizers. Three of the countries named in EO-2 (Iran, Syria and Sudan) are designated state sponsors of terrorism. Numerous sources, including former Obama administration top officials, have confirmed the serious vetting problems that EO-2 seeks to address.

The terrorist attacks in Paris, London, Brussels, Cologne and elsewhere in the wake of ISIS and other terrorists accompanying unvetted refugees pouring into Europe, and increased radical terrorist activity in the United States – the Boston Marathon, San Bernardino, Orlando – highlight the danger posed by terrorists infiltrating into the United States along with refugee and immigrant streams.

EO-2's vital purpose is to protect the American public by improving our country's vetting and immigration system. The executive order's aims thus exemplify our most fundamental, overriding value of protecting American lives.

Some of EO-2's opponents have proffered distorted interpretations of Jewish/Judeo-Christian and American values to try to justify admitting persons into the United States who cannot be properly vetted and who

thus endanger U.S. citizens. Jewish refugees' life-threatening situations and U.S. policies during World War II are *not* analogous to today's circumstances. Past dissimilar situations do not warrant admitting into the United States persons who cannot be properly vetted.

ARGUMENT

I. NUMEROUS SOURCES CONFIRM THE WEAKNESSES IN U.S. VETTING PROCESSES THAT EO-2 SEEKS TO ADDRESS

During the eighteen months leading up to EO-2's issuance, bipartisan Congress members and numerous experts – including top Obama administration officials testifying before Congress – brought to the public's attention terrorist infiltration dangers and America's inability to adequately vet immigrants from terrorist havens/conflict zones, especially Syria. EO-2 addresses, in a clear religion-neutral constitutional manner, the precise concerns that Congress and a veritable parade of experts highlighted. As the Government set forth, the Fourth Circuit and *Hawaii* District Court improperly speculated about President Trump's supposedly illicit purpose in issuing EO-2. *Brief for Petitioners Trump, President of U.S., et al.*, pp. 70-78, *Trump v. Hawaii*, Nos. 16-1436 and 16-1540 (S. Ct. Aug. 10, 2017).

The Congressional and expert backdrop set forth below further buttresses that EO-2 was issued for proper constitutional purposes, in the national interest:

• **Former FBI Director James Comey** testified before the Homeland Security Committee on October 21, 2015:

> If someone has never made a ripple in the pond in Syria in a way that would get their identity or their interests in our database, **we can query our database until the cows come home, but there will be nothing showing up because we have no record of them** . . . we can only query against that which we have collected . . . **Syrian refugees will be harder to check because, unlike in Iraq, US soldiers have not been on the ground collecting information on the local population**. . . . [W]ith Iraqi databases, we had far more data because of our country's work there for a decade. This is a different situation . . . yet a number of people who were of serious concern [slipped through the screening of Iraqi war refugees, including two arrested on terrorism charges].[2]

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[2] *Nation's Top Security Officials' Concerns On Refugee Vetting*, H. Rep. Homeland Security Committee website, Nov. 19, 2015, https://homeland.house.gov/press/nations-top-security-officials-concerns-on-refugee-vetting/ (quoting Comey Oct. 21, 2015 testimony). *See also Homeland Security Committee Hearing on Worldwide Threats and Homeland Security Challenges*, video, Oct. 21, 2015, https://homeland.house.gov/hearing/worldwide-threats-and-homeland-security-challenges/

Emphasis is added unless otherwise specified.

Comey also testified before the House Judiciary Committee on October 22, 2015 that we have a "dramatically" less robust data set for Syrian refugees than for Iraqi refugees.[3]

A year later, on September 28, 2016, Comey again testified before the House Judiciary Committee that the same problem still exists – lack of data on Syrian migrants, saying:

> The challenge remains, **especially with respect to folks coming from Syria, we are unlikely to have anything in our holdings.** That is, with people coming from Iraq, the United States Government was there for a very long period of time, we had biometrics, we had source information. We are unlikely to have that kind of picture about someone coming from Syria, . . .[4]

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[3] *Oversight of the Federal Bureau of Investigation, Hearing Before the Committee on the Judiciary*, H. Rep., 114th Cong., 1st Sess., Oct. 22, 2015, No. 114-55, https://judiciary.house.gov/wp-content/uploads/2015/10/114-55_97262.pdf, p. 54. *See also id.*, at 28, 53-55, 64 and 70.

[4] *Oversight of the Federal Bureau of Investigation, Hearing Before the Committee on the Judiciary,"* H. Rep., 114th Cong., 2nd Sess., Sept. 28, 2016, No. 114-91, https://judiciary.house.gov/wp-content/uploads/2016/09/114-91_22125.pdf, p. 94. *See also id.*, pp. 64-65, 85-86, 93-95, and 115-116.

• **Former Director of National Intelligence Gen. (ret.) James Clapper** testified: "We obviously don't put it past the likes of ISIS to infiltrate operatives among these refugees, that's a huge concern of ours."[5]

• **FBI Assistant Director Michael Steinbach** stated: "Yes, I'm concerned [about bringing Syrian refugees into the United States]. . . . [T]he concern in Syria is that we don't have the systems in places on the ground to collect the information."[6]

• **Former Director of the National Terrorism Center Nicholas Rasmussen** testified in response to Congressman Lamar Smith (R-TX)'s query regarding whether terrorist organizations were likely to infiltrate the U.S. to commit terrorist acts: "We have certainly seen terrorist groups talk about, think about, exactly what you are describing."[7]

• **Former Department of Homeland Security Director León Rodríguez**, admitted when questioned by Senator Ted Cruz (R-TX) that refugee

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[5] *Nation's Top Security Officials' Concerns on Refugee Vetting*, *supra* n.2 (quoting Clapper Sept. 9, 2015 statement).

[6] *Id.* (quoting Steinbach Feb. 12, 2015 statement).

[7] *Homeland Security Committee Hearing on Worldwide Threats*, *supra* n.2, minute 55:00-57:00; Lana Shadwick, *Homeland Security Hearing Reveals Why Accepting Syrian Refugees Risks American Lives* – video, Nov. 17, 2015, http://www.breitbart.com/big-government/2015/11/17/homeland-security-hearing-reveals-accepting-syrian-refugees-risks-american-lives/

applications can be approved based solely on the applicant's testimony, without any documentation, evidencing further weaknesses in the U.S. vetting system.[8]

- **Lebanon's Education Minister Elias Bousaab** warned former British Prime Minister David Cameron that two in every 100 Syrian migrants smuggled into Europe are ISIS-trained jihadists, sent under cover to attack western targets. That equals 200 jihadists per ten thousand migrants. Minister Bousaab also stated that the terrorists select operatives, including children, in refugee camps and schools before trafficking them into Europe via Turkey and Greece.[9]

- **ISIS Operative:** A Syrian ISIS smuggler revealed in 2015 that ISIS had already smuggled 4,000 ISIS jihadists into Europe.[10]

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[8] *Video: Obama Administration Official Admits to Allowing Refugees in to U.S. Based on Their Testimony Alone*, Senator Ted Cruz press release, Sept. 28, 2016, https://www.cruz.senate.gov/?id=2841&p=press_release

[9] Jack Doyle, *Two in Every 100 Syrian Migrants are ISIS fighters, PM is Warned: Lebanese Minister Tells Cameron Jihadists are Coming 'Under Cover' to Attack the West*, Daily Mail, Sept. 15, 2015, http://www.dailymail.co.uk/news/article-3234458/Two-100-Syrian-migrants-ISIS-fighters-PM-warned-Lebanese-minister-tells-Cameron-extremist-group-sending-jihadists-cover-attack-West.html

[10] Aaron Brown, *'Just wait . . . ' Islamic State Reveals it has Smuggled THOUSANDS of Extremists into Europe*, UK Express, Nov. 18, 2015, http://www.express.co.uk/news/world/555434/Islamic-State-ISIS-Smuggler-THOUSANDS-Extremists-into-Europe-Refugees

• **House Homeland Security Committee, Counterterrorism and Intelligence Subcommittee Chairman, Congressman Peter King** (R-NY) stated on national television:

> [W]e know [ISIS is] going to try [to seed ISIS terrorists among refugees], and [with] allowing 10,000 people in from Syria, [] we have to assume that somebody is going to make it through . . . in the post-9/11 era, we always have to assume the worst, and there's a very good chance here that the worst will happen. **There is absolutely no way – no real way of vetting, to any extent, these refugees coming in . . . there is no intelligence on the ground.** We don't have people on the ground who can vouch for everyone. There's obviously no government records we can go to. Syria is a totally chaotic country, and it's a hotbed of al Qaeda and ISIS. And **we have no idea who's coming out of Syria. . . . it definitely puts the United States at risk**. . . . We have to seal the borders now, and have the strictest possible vetting.[11]

Congressman King also wrote:

> [W]e know that ISIL will attempt to infiltrate its members into the United States with these refugees. . . . Since the beginning of the year, **the FBI has arrested more than 50 individuals connected with ISIL and plotting**

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[11] Ian Hanchett, *Peter King: 'No Real Way of Vetting' Syrian Refugees*, Breitbart, Sept. 15, 2015, http://www.breitbart.com/video/2015/09/15/peter-king-no-real-way-of-vetting-syrian-refugees/

> **attacks in the homeland; we cannot afford to compound this threat.** With the lack of stable foreign governments and on-the-ground intelligence in Syria, our ability to vet refugees is significantly degraded. The [Obama] White House announcement that 10,000 additional Syrian refugees will be admitted next year is contrary to the advice of law enforcement and intelligence professionals.[12]

Congressman King noted that his statements were based on classified briefings to Congress about the U.S. vetting process.[13]

• **House Homeland Security Committee Chairman, Congressman Michael McCaul** (R-TX) issued a press release stating:

> Many Americans are understandably concerned about the threat posed by inadequate security screening procedures for refugee [sic] seeking entry into the United States. **ISIS themselves have stated their intention to take advantage of the crisis to infiltrate**

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[12] Peter King, *Rep. Peter King: Refugees Bring Security Risks*, USA Today, Sept. 13, 2015, https://www.usatoday.com/story/opinion/2015/09/13/syrian-refugees-rep-peter-king-editorials-debates/72212362/

[13] Gregg Birnbaum, *Pete King: No Vetting, No Syrian Refugees*, CNN, Nov. 17, 2015, http://www.cnn.com/2015/11/17/politics/pete-king-vetting-syrian-refugees/index.html

> the west. We have to take this threat seriously.[14]

Chairman McCaul also released a compendium of ten high-level Obama administration officials' warnings about vetting inadequacies and infiltration dangers, along with his own statement that:

> It is the [Obama] Administration's own officials that were warning us about this [vetting] program. It's not me making this up. This came from testimony that came from both F.B.I. and homeland security officials in briefings and in public testimony. . . . [T]he fact of the matter is: the threat is real. ISIS has said in their own words that they want to exploit it to infiltrate the West. Again, it is not a threat I am making up, it's a threat their [Obama's] own officials have warned us about.[15]

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[14] *McCaul Introduces Bill to Give Congress Oversight of Syrian Refugee Resettlement Program*, Congressman Michael McCaul press release, Sept. 18, 2015, https://mccaul.house.gov/media-center/press-releases/mccaul-introduces-bill-to-give-congress-oversight-of-syrian-refugee

[15] *Nation's Top Security Officials' Concerns On Refugee Vetting*, *supra*, n.2 (quoting warnings regarding vetting from former Obama administration officials: FBI Director James Comey; CIA Director John Brennan; National Terrorism Center Director Nicholas Rasmussen; Homeland Security Secretary Jeh C. Johnson; Special Presidential Envoy for the Global Coalition to Counter ISIL Gen. (ret.) John Allen; Director of National Intelligence James Clapper; FBI Assistant Director Michael Steinbach; and Homeland Security Under Secretary for Intelligence and Analysis Francis X. Taylor; and Institute for the Study of War Chairman General (ret.) Jack Keane).

- **House Committee on the Judiciary Chairman Congressman Bob Goodlatte** wrote to then-President Obama:

> [Y]our plan to admit 10,000 Syrian refugees to the United States during Fiscal Year 2016 . . . seems ill-conceived considering numerous statements by security officials within your Administration about the current lack of ability to properly vet potential refugees for admission to the United States. . . .

Congressman Goodlatte's letter then quoted admissions by FBI Director Comey (described above); Homeland Security Secretary Jeh Johnson (who conceded: "It is true that we're not going to know a whole lot about a lot of these Syrians"); officials of the U.S. Citizenship and Immigration Services (USCIS), the agency responsible for processing refugee applications and ensuring requisite background checks are performed (who admitted that Syria does not have any databases that the U.S. can access to run security checks); and FBI Counterterrorism Division Assistant Director Michael Steinbach (who testified that "all the data sets" that intelligence services would normally go to "don't exist.").[16]

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[16] House of Representatives Judiciary Committee press release, *Goodlatte: Why Does the President Ignore Concerns About Syrian Refugees?*, Oct. 27, 2015, https://judiciary.house.gov/press-release/goodlatte-why-does-the-president-ignore-concerns-about-syrian-refugees/; Congressman Bob Goodlatte letter to President Barack Obama, Oct. 27, 2015, https://judiciary.house.gov/wp-content/uploads/2016/02/102715_Letter-to-President-Obama.pdf

- **Senator Chuck Schumer** (D-NY, current House Minority Leader) said "a pause may be necessary" on the entry of Syrians to the U.S.[17]

- **Senator Dianne Feinstein** (D-CA, ranking Democrat on the Senate Intelligence Committee) stated that the U.S. needs to examine the role the visa process plays in security risks, and that ISIS has "got people all throughout Europe."[18]

- **Senators Joe Manchin** (D-WV) and **Shelley Moore Capito** (R-WV) and additional Senators sent a bi-partisan letter to then-President Obama, following the massive ISIS terror attacks in Paris in November 2015, stating:

> The U.S. government must redouble its efforts to keep the American people safe. We believe that an essential component of that effort is ensuring that no refugee related to the Syrian crisis is admitted to the United States unless the U.S. government can guarantee, with 100 percent assurance, that they are not members, supporters, or sympathizers of [ISIS] . . .
>
> Reports indicate that ISIS apparently utilized the flow of refugees to infiltrate at least one of the Paris attackers into Europe. These facts require a serious and objective reexamination of the Administration's policy toward Syrian refugees to avoid unnecessary risks. . . . [O]ur

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[17] *Schumer Joins Republicans Questioning Obama's Refugee Plan*, Newsmax, Nov. 17, 2015, http://www.newsmax.com/Headline/schumer-immigration-plan-syrian/2015/11/17/id/702593/

[18] *Id.*

> first and most important priority must be to ensure that any refugee who comes to the United States does not present a threat to the American people. . . . The fact that ISIS may have utilized the flow of refugees to infiltrate Europe and potentially the United States is not a surprise. . . . [Discusses DNI Clapper and FBI Director Comey's testimony].[19]

• **Congressman Bennie Thompson** (D-MS) told then-FBI Director Comey at the October 21, 2015 Homeland Security Committee hearing: "a lot of us are concerned about whether you have enough information available to you to do an accurate vetting."[20]

• **House Speaker Paul Ryan** (R-WI) called for a pause in Syrian refugee resettlement in the U.S., explaining:

> [I]t is better to be safe than to be sorry, so we think the prudent, the responsible thing is to take a pause in this particular aspect of this refugee program in order to verify that terrorists are not trying to infiltrate the refugee

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[19] *In Wake of Paris Attacks, Manchin Calls for Increased Efforts to Keep the U.S. Safe: Senators Say That the U.S. Should Not Accept Any Syrian Refugees Until They Are Thoroughly Vetted To Guarantee 100 Percent That They Are Not Involved With ISIS*, Sen. Manchin website, Nov. 16, 2015, https://www.manchin.senate.gov/public/index.cfm/press-releases?ID=2a6fde7b-055b-4699-a296-575197786f49

[20] Taylor Rushing, *FBI Admits There's No Way To Screen All The Syrian Refugees The Obama Administration Plans To Accept Into The US*, Daily Mail, Oct. 21, 2015, http://www.dailymail.co.uk/news/article-3283587/FBI-admits-s-no-way-screen-Syrian-refugees-Obama-administration-plans-accept-US.html

> population. . . . This is not about politics. This is about national security.[21]

- **Senate Majority Leader Mitch McConnell** (R-KY) likewise called for, "at the very least," a "pause or moratorium" in refugee programs.[22]

- **Thirty-one U.S. governors** announced after the Paris ISIS attacks that they opposed allowing Syrian migrants to settle in their states.[23]

- **Former federal terrorism prosecutor Andrew McCarthy** wrote:

> A background check is only as good as the available information about a person's background. In refugee pipelines like **Syria, Iraq, Afghanistan, Somalia, and Sudan, such information is virtually nonexistent**. . . .

McCarthy also described widespread immigrant violence in Europe – including enclaves where the law is ignored; thousands of torched cars; attacks on French and Belgian police; immigrant gangs controlling Malmo, Sweden; and the British soldier beheaded in

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[21] CNN Wire Service, *Speaker Paul Ryan Calls for Pause in Refugee Program: 'Better to be Safe than to be Sorry'*, Nov. 17, 2015, http://fox6now.com/2015/11/17/house-speaker-paul-ryan-calls-for-pause-in-refugee-program/

[22] *Id.*

[23] Byron Tau and Kristina Peterson, *Republican Governors Object to White House Syrian Migrant Policy*, Wall Street Journal, Nov. 16, 2015, https://www.wsj.com/articles/u-s-governors-object-to-white-house-syrian-migrant-policy-1447699052

broad daylight by jihadists known to British intelligence services.

McCarthy further noted that "vetting only works if you vet for the right thing." McCarthy explained that Washington only vets for "ties to terrorism" (defined as violent extremism) – and fails to vet for supremacist ideologies that breed tomorrow's terrorists.[24]

- **Polling:** An Arab Center for Research and Policy Studies' poll of 900 Syrian refugees in late 2015 found that one third of Syrian refugees are ISIS sympathizers, and 13% support ISIS.[25] One out of every eight supported ISIS!

- **Paris attacks: ISIS infiltration from Syria:** The coordinated ISIS attacks on the Bataclan theater, a soccer stadium and cafes throughout Paris in November 2015 were planned in Syria. Six of the eight Paris attackers spent time in Syria.[26] At least one

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[24] Andrew McCarthy, *The Controversy Over Syrian Refugees Misses the Question We Should Be Asking*, Nat'l Review, Nov. 28, 2015, http://www.nationalreview.com/article/427698/syrian-refugees-tk-andrew-c-mccarthy

[25] Kristinn Taylor, *SHOCK POLL: Third of Syrian Refugees ISIS Sympathizers, 13% Support*, Gateway Pundit, Nov. 17, 2015, http://www.thegatewaypundit.com/2015/11/shock-poll-third-of-syrian-refugees-isis-sympathizers-13-percent-support/ (linked to Arab Center for Research and Policy Studies poll, *The Military Campaign against the Islamic State in Iraq and the Levant: Arab Public Opinion*, http://english.dohainstitute.org/file/Get/40ebdf12-8960-4d18-8088-7c8a077e522e)

[26] Eliott C. McLaughlin and Catherine E. Shoichet, *Paris attacks: What We Know So Far*, CNN, Nov. 17, 2015, http://www.cnn.com/2015/11/16/europe/paris-attacks-at-a-glance/

of the Paris assailants posed as a Syrian refugee to enter Europe, via Greece and the Balkans, using a fake Syrian passport.[27]

The Paris attacks also revealed another difficulty: ISIS terrorists appear to be skilled at hiding their plans and affiliations – even from persons close to them. Mohammed Abdesalam said that he and the rest of his family did not know that his brothers were planning the Paris massacres.[28] U.S. vetting systems would seem to require a massive overhaul to be able to ferret out more than terrorists' own close family members know.

• **U.S. Vetting Failures:** Immigrants who have obtained U.S. citizenship and were subsequently arrested on terrorism-related charges, including assisting ISIS, evidence serious U.S. vetting failures. These immigrants have included one of the Boston massacre bombers; a Somali who trained with a terrorist group in Syria and plotted to execute American soldiers at a Texas military base; the Kuwaiti-born shooter of four

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[27] Marcus Walker and Noemie Bisserbe, *Paris Stadium Attacker Got to Europe Using Fake Syrian Passport: Man Apparently Posed As Refugee, Entered Through Greek Island Of Leros*, Wall Street Jnal, Nov. 16, 2015, https://www.wsj.com/articles/paris-stadium-attacker-entered-europe-via-greece-1447698583

[28] Gordon Rayner and Camilla Turner, *Suicide Bomber 'Blew Himself Up Because of Stress', Says Ibrahim Abdeslam's Family*, Telegraph, Nov. 16, 2015, http://www.telegraph.co.uk/news/world-news/islamic-state/11998297/Suicide-bomber-blew-himself-up-because-of-stress-says-Ibrahim-Abdeslams-family.html

U.S. Marines in Chattanooga, Tennessee; a Saudi female pre-school teacher who pledged allegiance to ISIS and planned to bomb a police funeral, and others.[29]

EO-2 provides further examples, including a Somali-born refugee who obtained U.S. citizenship and plotted to bomb a crowded Christmas tree-lighting ceremony in Portland, Oregon. EO-2 further notes that "[s]ince 2001, hundreds of persons born abroad have been convicted of terrorism-related crimes in the United States," and that more than 300 persons who entered the U.S. as refugees are currently the subjects of FBI counterterrorism investigations.

Even when the United States is warned about terrorist ties, U.S. vetting has spectacularly failed. Russia's intelligence agency cabled the FBI twice warning that immigrant Tamerlan Tsarnaev associated with militants.[30] Yet the FBI found that Tsarnaev had no links to terrorism, and no alert was triggered when Tsarnaev subsequently flew in and out of JFK airport. On September 11, 2011, Tsarnaev and his brother brutally slit the throats of three young Jewish men whom the Tsarnaevs had befriended,[31] and in April 2013,

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[29] Rachel Stolzfoos, *At Least 15 US 'Citizen Terrorists' Are Also Legal Immigrants*, Daily Caller, Nov. 18, 2015, http://dailycaller.com/2015/11/18/at-least-15-us-citizen-terrorists-are-also-legal-immigrants/

[30] *Russia Warned U.S. About Boston Marathon Bomb Suspect Tsarnaev*, Reuters, Mar. 25, 2014, http://www.reuters.com/article/us-usa-explosions-boston-congress-idUSBREA2P02Q20140326

[31] *2011 Waltham Triple Murder*, Wikipedia, https://en.wikipedia.org/wiki/2011_Waltham_triple_murder

they bombed the Boston marathon, murdering three more people and wounding over 264 innocent runners and bystanders.

The supposedly vigorous vetting of San Bernardino killer Tashfeen Malik that permitted her to enter the U.S. failed to uncover that the address listed on her visa application did not exist.[32] Dr. Ben Carson observed: "if [] vetting resulted in missing someone who carried out such a horrendous crime, that should be the end of the argument right there" for admitting Syrian refugees into the U.S.[33]

II. VULNERABLE U.S. GROUPS ARE AT PARTICULAR RISK FROM MIGRANTS

While all Americans are at risk from ISIS-infiltrated Syrian, etc. migrants, such immigration especially threatens vulnerable American groups, including American Jews, Homosexuals, women, various Christian denominations, etc. This further complicates the vetting process needed to assure all Americans' safety, again demonstrating the need for EO-2.

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[32] AP, *Jihadi Bride Entered The US On A 'Fiance Visa' On Which She Entered a FALSE Home Address*, Daily Mail, Dec. 4, 2015, http://www.dailymail.co.uk/news/article-3346831/California-killing-spurs-concerns-fiance-visa-program.html#ixzz3thCBWb6R

[33] Jose DelReal, *Ben Carson Says San Bernardino Shooting Should End Debate on Syrian Refugees*, Washington Post, Dec. 4, 2015, https://www.washingtonpost.com/news/post-politics/wp/2015/12/04/ben-carson-says-san-bernardino-shooting-should-end-debate-on-syrian-refugees/?utm_term=.4d928d0a2f7d

The ISIS shooters who perpetrated the San Bernardino Christmas party massacre specifically targeted a pro-Israel gentile Messianic Jew to murder first, after threatening him that Jews and Christians deserve to die.[34] The ISIS shooter in Orlando specifically targeted a gay nightclub.[35]

In France, radical migrants, ISIS, etc. have been terrorizing French Jews with hundreds of physical attacks and threats each year[36]; murdered a Rabbi and three innocent little Jewish schoolchildren[37]; murdered

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[34] Uriel Heilman, *Messianic San Bernardino Victim was Gentile Supporter of Israel, Argued with Killer on Islam*, Times of Israel, Dec. 5, 2015, http://www.timesofisrael.com/messianic-san-bernardino-victim-was-gentile-supporter-of-israel/

[35] Monica Hesse, *The Target was a Gay Nightclub*, Washington Post, June 12, 2016, https://www.washingtonpost.com/lifestyle/style/the-target-was-a-gay-nightclub-the-target-was-also-all-of-us/2016/06/12/74de576c-30cb-11e6-8f7-7b6c1998b7a0_story.html?utm_term=.6d3977569459

[36] Michael Kaplan, *Attacks On France's Jews Surge Amid Concerns Of Rising Anti-Semitism in Europe*, Int'l Business Times, July 13, 2015, http://www.ibtimes.com/attacks-frances-jews-surge-amid-concerns-rising-anti-semitism-europe-2006003

[37] AP, *French Gunman Who Killed Jewish Children 'Was Raised an Anti-Semite'*, The Guardian, Nov. 11, 2012, https://www.theguardian.com/world/2012/nov/11/french-gunman-mohamed-merah-racist

four Jewish shoppers at a kosher grocery[38]; and murdered an elderly Catholic priest.[39] Terrorists repeatedly targeted the Bataclan theater because Jews owned it.[40]

Syrians are indoctrinated from an early age to celebrate martyrdom and violence towards "enemies," and to hate Jews. Textbooks used in Syrian schools from 2001 through 2015 teach Syrian children that martyrdom and violence towards "enemies" are the path to glory; that Jews are evil people whose treachery brought the Holocaust upon themselves; and that Zionism is "world Imperialism" headed by the United States.[41]

The leader of Germany's Jewish community, Dr. Josef Schuster, implored German Chancellor Angela

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[38] Noah Rayman, *Kosher Grocery Assault Confirms Worst Fears of French Jews*, Time, Jan. 9, 2015, http://time.com/3661697/paris-terror-attack-kosher-grocery-jewish/

[39] *Islamic State Murder of Priest is Pure Savagery*, USA Today, July 30, 2016, https://www.usatoday.com/story/opinion/editorials/2016/07/30/islamic-state-murder-of-priest-is-pure-savagery/92609244/

[40] AP, *Jewish Owners Recently Sold Paris's Bataclan Theater, Where IS Killed Dozens*, Times of Israel, Nov. 14, 2015, http://www.timesofisrael.com/jewish-owners-recently-sold-pariss-bataclan-theater-where-is-killed-dozens/

[41] David Bedein, with Michael Kuttner, Ruthy Amkraut, Maayan Avery, Alena Cisneros, *What do Syrians Learn in Their Schools?*, Israel Resource Review, Dec. 8, 2015, http://israelbehindthenews.com/what-do-syrians-learn-in-their-schools/14197/?utm_source=wysija&utm_medium=email&utm_campaign=ibn-today

Merkel to set quotas limiting refugees. Schuster explained:

> "Many refugees are fleeing the terror of the Islamic State and want to live in peace and freedom, but at the same time they come from cultures in which hate towards Jews and intolerance are fixed components. Don't only think about the Jews, think about equal rights for women and the treatment of homosexuals."[42]

A leaked German intelligence chiefs document warned that fully integrating migrants will be "impossible," and that Germany was importing anti-Semitism, extremism and conflict.[43] On New Years' eve 2016, Middle Eastern migrants raped and assaulted 1,200 women in Cologne and other German cities.[44]

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[42] Sue Reid, *Migrant Blunder Splitting Germany In Two: Weeks Ago, Merkel Threw Open Germany's Doors. Today, Amid Fears It's Importing Anti-Semitism, Many Worry Their Way Of Life Is Under Threat*, Daily Mail, Nov. 27, 2015, http://www.dailymail.co.uk/news/article-3337002/Migrant-blunder-splitting-Germany-two-Weeks-ago-Merkel-threw-open-Germany-s-doors-Today-amid-fears-s-importing-anti-Semitism-worry-way-life-threat.html

[43] *Id.*

[44] Rick Noack, *Leaked Document Says 2,000 Men Allegedly Assaulted 1,200 German Women on New Year's Eve*, Washington Post, July 11, 2016, https://www.washingtonpost.com/news/worldviews/wp/2016/07/10/leaked-document-says-2000-men-allegedly-assaulted-1200-german-women-on-new-years-eve/?utm_term=.c69354ce1910

Radical Middle Eastern migrants in Europe have terrorized Jews: A Syrian migrant threw grenades at Jewish children waiting for a bus, killing a 15-year-old Jewish boy and wounding dozens of others. Elderly Holocaust survivors were violently attacked in their Amsterdam apartment. Terrorists attacked a Bar Mitzvah in Austria, trying to murder the children inside. Cries of "death to the Jews" fill certain Paris streets. Mobs screamed at Jews in Marseille: "Vive Mohamed Merah [murderer of Jewish children]; F___ the Jews." There are frightening attacks on European synagogues.[45]

Moreover, a 2007 poll found that 77% of Syrians support Hamas, whose headquarters was based in Damascus until 2012.[46] We will need to vet for this, too.

In the United States, Jews (especially college students) are being subjected to increasing anti-Semitic attacks. At colleges ranging from CUNY (City University of New York) to Vassar to University of California-Berkeley, the hate group "Students for Justice in Palestine" ("SJP") holds anti-Semitic rallies, chanting "Jews out of CUNY!," "Zionists out of CUNY!," "We support the Intifada!," and "Death to the Zionists!," and

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[45] Daniel Greenfield, *Opposing Syrian Muslim Refugees Is A Jewish Value*, Frontpage Mag., Dec. 2, 2015, http://www.frontpagemag.com/fpm/260961/opposing-syrian-muslim-refugees-jewish-value-daniel-greenfield. *See also* Jeffrey Goldberg, *Is it Time for Jews to Leave Europe?*, Atlantic, April 2015, https://www.theatlantic.com/magazine/archive/2015/04/is-it-time-for-the-jews-to-leave-europe/386279/

[46] *Id.* (Greenfield).

make it unsafe for Jewish students at some universities.[47] ("Intifada" is the violent "uprising" in which Palestinian Arabs bombed, murdered and maimed thousands of innocent Jews.) At Temple University, an SJP member or sympathizer punched an innocent Jewish student in the face, and a gang of SJP members screamed at the Jewish student that he was a "Zionist pig" and "kike" and deserved it.[48]

American synagogues in New York, Los Angeles, Chicago and Washington D.C. have been repeated targets[49] of terrorist plots.

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[47] *E.g.*, *ZOA Letter to CUNY Leaders about Anti-Semitic, Violence-Inducing Rallies There*, Feb. 22, 2016, http://zoa.org/2016/02/10315402-letter-to-cuny-chancellor-and-board-of-trustees-jew-haters-spread-fear-at-cuny-colleges/; Ziva Dahl, *It's Dangerous to Be Jewish and Pro-Israel at Vassar College*, Algemeiner, Nov. 16, 2015, http://www.algemeiner.com/2015/11/16/its-dangerous-to-be-jewish-and-pro-israel-at-vassar-college/; Ryan Torok, *Berkeley Students Chant for Intifada* [video], Jewish Journal, Oct. 14, 2015, http://jewishjournal.com/news/nation/california/178556/

[48] *ZOA Demands Expulsion of Temple U. Student Who Made Anti-Semitic Violent Attack on Jewish Student*, Aug. 21, 2014, http://zoa.org/2014/08/10256050-zoa-demands-expulsion-of-student-at-temple-u-who-made-anti-semitic-violent-attack-on-jewish-student/

[49] *E.g.*, Benjamin Weiseraug, *Convictions in Synagogue Bombing Plot Upheld*, NY Times, Aug. 23, 2013, http://www.nytimes.com/2013/08/24/nyregion/appeals-court-upholds-convictions-of-men-in-bronx-synagogue-plot.html; AP, *FBI Thwarts Muslim's Plot to Bomb Florida Synagogue*, NY Post, May 3, 2016, http://nypost.com/2016/05/03/fbi-thwarts-muslims-plot-to-bomb-florida-synagogue/

The improved vetting contemplated by EO-2 is essential for keeping these dangerous situations from becoming even more rampant.

III. PAST REFUGEE SITUATIONS AND POLICIES ARE NOT ANALOGOUS TO EO-2

ISIS-infiltrated Syrian etc. refugees are *not* analogous to past waves of refugees to America, such as the Jews fleeing from the Nazis whom EO-2's opponents often invoke. As Congressman Peter King noted, previous refugees "were not a threat to the United States,"[50] and were fleeing for their lives. By contrast, refugees from EO-2 nations pose a threat, and are already living in refugee camps in countries where their lives are not in danger. Congressman King explained:

> Jews were kept out during the 1930s when they were escaping Nazi Germany, and that was terrible. . . . The fact is, those Jews were not a threat to the United States, there was no rationale to keep them out. . . . It was a terrible, terrible decision, and they should have been let in, because they were no threat to the United States, plus they needed, of course, the relief from the horror they were going through.
>
> In this [Syrian refugee] case, we have no idea who we're getting. And a lot of these refugees – even for instance, my understanding is, that three-year-old boy that was – that washed up

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[50] *Peter King: 'No Real Way of Vetting' Syrian Refugees*, *supra* n.11.

> onto the shore, . . . and it was a terrible disaster, but he was not a political refugee. He and his family were living in Turkey, and they were from Syria, went to Turkey, and they were going to Europe for economic gain. And, you can understand that, but do you open up all your borders, not knowing who's a real refugee, who's coming for economic reasons, and who is affiliated with ISIS?[51]

Jews fleeing from the Nazis also lacked viable alternatives. Britain's infamous 1939 White Paper slammed shut Israel's doors to Jewish immigration, in violation of Britain's League of Nations Mandate.[52] Other nations were being overrun by the Nazis, or refused Jews entry. By contrast, refugees from EO-2 countries are already located in "countries of first asylum" – where the U.S. can continue to compassionately give them aid, without risking U.S. citizens' lives.[53]

IV. EO-2's PURPOSE – PROTECTING AMERICAN CITIZENS – IS A FUNDAMENTAL DUTY AND VALUE

EO-2's policy and purpose is "to protect [U.S.] citizens from terrorist attacks, including those committed

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[51] *Id.*

[52] *British White Papers: 1939*, Jewish Virtual Library, http://www.jewishvirtuallibrary.org/british-white-paper-of-1939

[53] Barbara Hollingsworth, *Former Ambassador to UN: US Has 'No Obligation' to Accept Syrian Refugees*, CNS News, Nov. 16, 2015, http://www.cnsnews.com/news/article/barbara-hollingsworth/former-un-ambassador-us-has-no-obligation-accept-syrian-refugees

by foreign nationals" and "to improve the screening and vetting protocols and procedures associated with the visa-issuance process and the USRAP [United States Refugee Admissions Program]."[54]

Protecting the lives of our nation's citizens is a fundamental, overriding value.

The U.S. Declaration of Independence lists the right to "life" as the first inalienable right, and recognizes that our government must control admissions into the country, to protect American lives. The Declaration of Independence condemned King George both for interfering with the immigration of persons whom the American colonists wished to admit, and for transporting violent foreigners into the U.S. to kill and tyrannize American colonists, stating:

> He [King George] is at this time transporting large Armies of foreign Mercenaries to compleat [sic] the works of death, desolation, and tyranny, already begun with circumstances of Cruelty & Perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.[55]

Emma Lazarus's poem "*The New Colossus*," part of which is inscribed on the Statue of Liberty, likewise recognizes that America's welcome mat is not an invitation to those who seek to destroy or dominate us. "*The New Colossus*" welcomes to America those who "yearn to breathe free," while denouncing foreigners

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[54] EO-2, § 1(a).

[55] Declaration of Independence (July 4, 1776).

seeking to conquer and tyrannize, telling them to stay away, with the lines: "Not like the brazen giant of Greek fame, With conquering limbs, astride from land to land. . . . Keep, ancient lands, your storied pomp!"[56] Emma Lazarus was also horrified by Russia's deadly anti-Jewish pogroms, and would be equally aghast if her poetry was misused to admit ISIS infiltrators who could wreak death and destruction on U.S. citizens.

The U.S. Immigration and Nationality Act (INA), likewise does not countenance admission of foreigners who persecute or harm others. Under the INA, "[t]he term 'refugee' does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion."[57] We cannot determine whether a potential immigrant incited or assisted persecution if he is not properly vetted.

The Torah (the Five Books of Moses) and Jewish/Judeo-Christian values also cherish preserving citizens' lives above unfettered immigration. We are discussing these principles both because "the American Constitution was rooted in ethical and political principles whose source is . . . the Torah, the Five Books of

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[56] Emma Lazarus, *The New Colossus* (1883), https://www.poetryfoundation.org/poems/46550/the-new-colossus

[57] Immigration and Nationality Act (INA), 8 U.S.C. § 1101(42).

Moses,"[58] and because EO-2's opponents are misleadingly and wrongly invoking the Torah and supposed Jewish/Judeo-Christian values to attack EO-2.

Preserving human life ("pikuach nefesh") takes precedence over Judaism's other commandments.[59] The Torah and Talmud repeatedly command us to prevent situations and avoid people who endanger our lives, and to erect barriers to prevent death and injury. Specific commands include: "Take heed and carefully guard your lives"[60]; "Distance yourself from a bad neighbor; do not connect yourself with a rasha [evildoer]"[61]; and "Make a fence for your roof, so you will not place blood in your house if a fallen one falls off of it."[62] These commandments are interpreted expansively, and require a wide range of precautionary steps to protect lives, including, for instance, fencing in a swimming pool to prevent neighborhood children from wandering into the area and drowning. Properly vetting persons wishing to enter the country, and keeping out those who cannot be properly vetted, comports with these values.

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[58] Prof. Paul Eidelberg, *Jewish Roots of the American Constitution*, http://britam.org/eidelberg.html

[59] Rabbi Simon Glustrom, "*Saving a Life (Pikuach Nefesh)*," http://www.myjewishlearning.com/article/saving-a-life-pikuach-nefesh/

[60] Deuteronomy 4:9 and 4:15.

[61] Pirkei Avot 1:7.

[62] Deuteronomy 22:8.

Opponents of EO-2 also erroneously cite Exodus 22:20: "You shall not wrong [taunt] a stranger or oppress him, for you were strangers in the land of Egypt." In fact, the Hebrew word for "stranger" in Exodus 22:20 (and similar passages) is "ger." A "ger" is a convert to Judaism or a resident alien who accepts seven basic laws prohibiting murder, theft, idolatry, incest, etc. Commentators explained that Exodus 22:20 (and similar passages) forbid taunting a convert, including by reminding him of his non-Jewish past. These passages do not support immigration of an ISIS-infiltrated hostile population.

A potential terrorist who could murder innocent citizens in his new host country is neither a convert nor a resident alien who accepted the basic moral laws, and is thus not a "ger." Instead, he is an enemy, prohibited from dwelling in the land.

Strong borders are a Jewish/Judeo-Christian value. Moses blessed the Jewish people before his death with a prayer for strong borders "sealed like iron and copper" to enable the people to live "securely" into healthy "old age."[63] Bringing enemies into one's country is not only unwise; it is prohibited. The Torah also commands: "They [enemies] shall not dwell in your Land,"[64] and explains that God established borders of the world's nations.[65] Thus poorly vetted or unfettered

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[63] Deuteronomy 33:25, 28.

[64] Exodus 23:33.

[65] Deuteronomy 23:8.

immigration – an essentially borderless world – is not a Jewish/Judeo-Christian value.

CONCLUSION

The judgments of the courts of appeals should be reversed.

Respectfully submitted,

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